

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BDS III MORTGAGE CAPITAL G, LLC,
Plaintiff,
-against-
MARTIN NV II, INC.,
Defendant.

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24-CV-01826 (MMG)

ORDER OF DEFAULT
JUDGMENT

MARGARET M. GARNETT, United States District Judge:

This action was commenced on March 11, 2024, by the filing of the Complaint. Complaint (“Compl.”), Dkt. No. 1. The Summons and Complaint were properly served on Defendant Martin NV II, Inc. (“Defendant”) on March 25, 2024, and proof of service was filed on March 29, 2024, as Dkt. No. 9. Defendant has not appeared in this action or responded to the Summons and Complaint. On April 25, 2024, the Clerk of the Court entered a Clerk’s Certificate of Default. *See* Dkt. No. 14. Defendant is in default of its obligation to respond to the Summons and Complaint.

For the reasons set forth above and during the Show Cause Hearing that occurred on June 26, 2024, this Court granted default in favor of Plaintiff BDS III Mortgage Capital G, LLC (“Plaintiff”) against Defendant.

Pursuant to the terms of the parties’ contract, Plaintiff is entitled to recover two components of damages: (i) the amount of the outstanding debt owed under the loan, with contractual interest; and (ii) its costs and expenses incurred in connection with its efforts to collect the outstanding debt. Plaintiff has sufficiently proved both components of its damages.

During the hearing, and after reviewing the Complaint and the various Exhibits attached to the Complaint (including, *inter alia*, the Promissory Note at Exhibit 1, the Loan Agreement at Exhibit 3, and the Guaranty of Recourse Obligations at Exhibit 4), as well as after reviewing the default judgment motion and papers filed by Plaintiff, the Court entered default judgment against Defendant for **\$26,000,000**, which is the principal amount on the loan for which Defendant is the guarantor. *See* Compl.; Default Judgment Motion, Dkt. No. 21; Declaration of Randall L. Morrison, Jr. and Exhibits, Dkt. No. 22.

In addition, as explained during the hearing, and after reviewing the Complaint, its Exhibits, and the default judgment motion and papers, and in particular after reviewing the Declaration of Stephen King (*see* Dkt. No. 22-4), the Court awarded Plaintiff damages for both interest on the principal loan (hereinafter, “Regular Interest”) and “Default Interest,” as described in the Loan Agreement. *See* Ex. 3 to Compl., Dkt. No. 1-3 § 2.5.

Specifically, for Regular Interest, this Court awarded \$3,321,230.09 as of June 1, 2024, as well as a *per diem* rate of \$7,361.24 from June 2, 2024, to the date of this Order of Default Judgment, which totals **\$3,512,622.33**. (This includes \$191,392.24 (\$7,361.24 x 26) from June 2,

2024, to the date of this Order + \$3,321,230.09.) For the “Default Interest,” this Court awarded \$1,430,000.00 as of June 1, 2024, as well as a *per diem* interest rate of \$3,611.11 from June 2, 2024, to the date of this Order of Default Judgment, which totals **\$1,523,888.86**. (This includes \$93,888.86 (\$3,611.11 x 26) from June 2, 2024, to the date of this Order + \$1,430,000.00.) The total damages for the outstanding debt are **\$31,036,511.19**. (\$26,000,000 + \$3,512,622.33 + \$1,523,888.86 = \$31,036,511.19)

Furthermore, Paragraph 4 of the Guaranty of Recourse Obligations provides as follows:

Costs and Expenses of Collection. Guarantor agrees that, with or without notice or demand, Guarantor [Defendant] will reimburse Lender [Plaintiff], to the extent that such reimbursement is not made by Borrower, for all costs and expenses (including counsel fees and any fees of a special servicer) incurred by Lender in connection with the collection of the Guaranteed Obligations or any portion thereof or with the enforcement of this Guaranty of Recourse Obligations (this “Guaranty”).

Ex. 4 to Compl., Dkt. No. 1-4 at 2.

After reviewing the Guaranty of Recourse Obligations and time entries submitted by Plaintiff’s counsel for *in camera* and *ex parte* review, the Court awards Plaintiff attorney’s fees and costs in the amount of **\$1,161,090.25**, which includes costs and expenses incurred in connection with Plaintiff’s efforts to collect the outstanding debt in this action and in other actions.

Accordingly, judgment is entered in favor of Plaintiff and against Defendant in the amount of \$31,036,511.19, representing the amount of the outstanding debt, with interest, owed under the loan as of June 26, 2024, plus \$1,161,090.25, representing Plaintiff’s costs and expenses incurred in connection with its efforts to collect that amount, for a total sum of **\$32,197,601.44**.

Any pending motions are moot. All conferences are canceled. The Clerk of Court is directed to CLOSE the case.

Dated: June 27, 2024
New York, New York

SO ORDERED.



MARGARET M. GARNETT
United States District Judge